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*Attorneys for Plaintiff*  
LISA ALBERTSON

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA**

LISA ALBERTSON,

Plaintiff,

vs.

REGENTS OF THE UNIVERSITY OF  
CALIFORNIA,

Defendant.

**Case No.**

**COMPLAINT FOR:**

- 1. VIOLATION OF TITLE II OF  
THE AMERICANS WITH  
DISABILITIES ACT (42 U.S.C. §  
12132);**
- 2. VIOLATION OF SECTION 504  
OF THE REHABILITATION ACT  
(29 U.S.C. § 701, *et seq.*)**

**JURY TRIAL DEMANDED.**

Plaintiff alleges as follows:

**THE PARTIES**

1. Plaintiff, LISA ALBERTSON, ("Plaintiff") is a resident of Sonoma County,  
California.



1 accommodations and services from Defendant's which included: the use of a note taker; the use  
2 of furniture to ensure access to classes, labs, and/or exams such as a detached table and chair; the  
3 opportunity to alternate between sitting and standing during the class period; time-and-one-half all  
4 her classes to complete exams and quizzes; arrangements to take a makeup exam if her disability  
5 prevented her from taking the exam at the scheduled time; frequent rest-breaks during exams; time  
6 for these rest-breaks has been included in the total calculation for extended exam time; the use of  
7 an audio recorder; the use of computer for quizzes/exams; and excusals for missing class due to  
8 having to obtain medical treatment.

9 8. The evidence demonstrates that Plaintiff was able to be a successful  
10 student in all classes in which she received appropriate and needed accommodations, despite the  
11 clear academic challenges she had.

12 9. During her enrollment, Plaintiff was diligent in communicating with her professors  
13 and academic advisors to keep them informed of the how her disabilities negatively impacted her  
14 academic performances and to develop plans on ways to meet her course requirements.

15 10. On August 6, 2012, Plaintiff was driving across the Richmond Bridge when the  
16 Chevron gas refinery, which is located next to the bridge, exploded. As a result, Plaintiff was  
17 exposed to noxious and dangerous gas chemicals and began to experience serious health  
18 conditions. These conditions included a severe hindrance to her breathing, asthma for which  
19 Plaintiff required nebulizers and inhalers, a development of peripheral neuropathy in her hands,  
20 migraines, and a loss of focus. Given these conditions and side effects of medications related to  
21 conditions, Plaintiff required note-taking services so that she could maintain focus in class and  
22 have the sufficient energy level to do so.

23 11. As a result of these incidences, Plaintiff requested note-taking services in the Fall of  
24 2012. Given her disabilities, DSP provided this service to her based upon requested medical  
25 documentation from her medical provider.  
26

1           12. Per its guidelines, UC Berkeley provides note-taking services to students with  
2 disabilities by finding student volunteers in the class who provide copies of his or her notes to the  
3 disabled student. Volunteers then received a monetary stipend at the end of the year for their work.  
4 UC Berkeley has also stated that this system fails to produce a note-taker in only approximately  
5 5% of cases and that LiveScribe pens and/or digital recorders shall be provided as an alternative if  
6 such a situation were to occur.

7           13. At the beginning of the Fall 2012 semester, Plaintiff was denied continuing financial  
8 aid because of her alleged lack of Satisfactory Academic Progress (“SAP”). Plaintiff appealed this  
9 denial given the extenuating circumstance described above. Plaintiff’s appeal was approved and  
10 she was granted continued financial aid for the semester.

11           14. In the Spring 2013, Plaintiff took two classes for 7 units: Anthro 115-Medical  
12 Anthropology and UGIS 112-Women and Disability. At the end of this semester, Plaintiff had to  
13 take incompletes in these courses given that she had to undergo medical procedures due to  
14 exposure to Hepatitis A outbreak due to organic frozen berry product purchased at Costco. During  
15 this semester, Plaintiff also diagnosed with Diabetes 2. Both of these health issues required several  
16 doctors’ visits and treatments, therefore making class attendance and participation unfeasible.

17           15. Plaintiff was also denied financial aid during the Spring 2013 Semester,  
18 again due to an alleged lack of SAP. Plaintiff appealed this decision given that she had undergone  
19 many medical procedures due to a potential Hepatitis A outbreak and being diagnosed with  
20 Diabetes 2. Plaintiff’s appeal was approved and she was granted continued financial aid for the  
21 semester.

22           16. For the Fall 2013 Semester, Plaintiff enrolled in three classes: Social Welfare 250M,  
23 Social Welfare 97-Field Study, and Introduction to Public Policy Analysis PP101-Negotiations.  
24 Per the DSP approved disability accommodations, Albertson was to receive note-taking services  
25 and use of an audio recording device, among other accommodations, for all classes. However, the  
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1 disability accommodation letters for both classes did not indicate whether an audio recording  
2 device would be used as an alternate to the provided note-taking service.

3 17. At the start of the Fall 2013 semester, Plaintiff was again provided financial aid  
4 despite allegedly not making SAP given that DSP had failed to provide her with accommodations  
5 for her to successfully complete coursework and she had been preliminarily diagnosed with cancer.  
6 Recent testing has indicated that Plaintiff does not have cancer as of the date of this complaint.

7 18. In order to maintain eligibility, DSP mandated that Plaintiff was to: (1) complete six  
8 units in the Fall 2013 semester; (2) maintain a cumulative or semester GPA of 2.0, and (3) not  
9 attempt to withdraw from the Fall 2013 semester.

10 19. The Fall 2013 semester began on August 29, 2013. From the very start of the  
11 semester, Defendant was unable to obtain a note-taker for Plaintiff's Social Welfare 250M class  
12 despite attempts to do so. During the course of this semester, Plaintiff contacted then-DPS director,  
13 Paul Hippolitus, and then-Disability Specialist, Haydee Lindren, to inquire about the note-taking  
14 service. DPS told Plaintiff that there were no student volunteers available to take notes in her  
15 Social Welfare 250M class.

16 20. Plaintiff also only received notes in her Public Policy Analysis PP101 class for 3 out  
17 of 14 Classes, which is a wholly inadequate amount given Plaintiff's clear need for note-taking  
18 services. Plaintiff did not require note-taking services in her Social Welfare 97-Field Study class.

19 21. In response to the lack of volunteer note-takers, Defendant provided Plaintiff with a  
20 technology grant for an iPad to be used as a light weight device for both recording and access to  
21 online materials. Plaintiff was originally told by DSP staff that she could apply for the technology  
22 grant to be used for purchase of an iPad but after applying for the grant, was denied. Plaintiff then  
23 emailed Paul Hippolitus explaining the lack of note-takers and need for iPad device for her courses.  
24 Paul Hippolitus then reversed the denial and approved the grant, also acknowledging the note-  
25 taking issue. No one in the DSP office indicated in Plaintiff's disability accommodation letter that  
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1 such a device would be provided in lieu of the notetaking service. For Plaintiff's Social Welfare  
2 250M class, it was critical that she incorporate notes from the class lectures into the assignments  
3 and exams due to the fact that a large portion of the lectures and student sharing was to be  
4 referenced in written journals/assignments/final exam. As such, the lack of notes in this course  
5 presented a huge barrier to Plaintiff being a successful student.

6 22. Given that she had failed to receive appropriate accommodations during this  
7 semester, Plaintiff asked for her Professors in her classes to give her "Incomplete" grades. Her  
8 Professors granted these requests.

9 23. At the start of the 2014 semester, Plaintiff was again denied financial aid given that  
10 she had only completed one unit from the Fall 2013 semester and had not completed classes in  
11 which she had "Incomplete" grades, which had been a condition for continued financial aid during  
12 the 2012-2013 school year. Defendant also noted that Plaintiff had failed to complete 6 units, a  
13 condition to which she had agreed to in past semesters in order to continue receiving financial aid.

14 24. Defendant's financial aid administrators then presented the following options to  
15 Plaintiff: (a) drop all her courses (which then incur a mandatory one-year withdrawal from the  
16 University, and Plaintiff would then have to reapply for admission); or (b) Ask her professors to  
17 extend her incompletes from previous courses, and complete all her courses continue with the 2014  
18 spring semester, despite having not received appropriate accommodations the previous semester.  
19 Plaintiff decided to continue to be enrolled at the University.

20 25. On March 20, 2014, Plaintiff appealed this decision to the University's Financial  
21 Aide Office's SAP Committee ("SAP Committee"). Drafting this appeal required extensive time  
22 and effort for Plaintiff to complete given her disabilities. In support of her appeal, Plaintiff outlined  
23 the fact that she had not received appropriate note-taking accommodations during Fall 2013  
24 semester and still had to attend many medical appointments and life-threatening procedures due to  
25 a cancer scare. Furthermore, Plaintiff noted the progress she was making in the three classes in  
26

1 which she had prior incompletes, the fact that two of her professors had granted extensions for her  
2 to complete the courses, that one of the classes had been completed and just required the professor  
3 to grade several final assignments, and that she had “A” grades in all the classes. Finally, Plaintiff  
4 explained that her professors and counselors/advisors had informed her that she was on track to  
5 graduate that year and expressed confidence that she would be able to complete her required course  
6 work in order to do so. The SAP Committee, however, denied this appeal.

7 26. For the beginning of the Spring 2014 semester, Plaintiff reenrolled in Public Policy  
8 Analysis PP101-Legislative Lobbying and 3 other classes. Plaintiff dropped 2 classes before the  
9 drop deadline, leaving her with PP101-Legislative Lobbying and Social Welfare 97-Field Study  
10 for a total of 6 units.<sup>1</sup> Plaintiff only required note-taking accommodation for the PP101 course.  
11 Plaintiff did not receive note-taking accommodation for PP101 until approximately three weeks  
12 left in the semester, which required her to request an incomplete in the course. Plaintiff’s  
13 professors were able to assign Ms. Albertson a grade of “Incomplete” due to the fact that her “work  
14 in a course has been of passing quality, but is incomplete for reasons beyond her control.”

15 27. Her disability accommodation letters again provided her note-taking services and  
16 audio recording device, but again failed to state that audio recording devices could be used as an  
17 alternative to note-taking services.

18 28. The evidence demonstrates that Defendant was unable to secure a volunteer note-  
19 taker for Plaintiff’s class and even attempted to have the course’s Professor provide his notes.

20 29. Plaintiff and DSP also engaged in many conversations regarding this service in  
21 the class during the semester.

22 30. On approximately March 6, 2014, DSP wrote to Plaintiff and purported to offer  
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24 <sup>1</sup> It is a common practice for students at the University to enroll in more classes than they plan on  
25 taking in order to figure out which ones are best suited to their likings and/or needs. When a student  
26 does not want to take the course they will drop them before the University’s drop deadline.

1 her a recording device in lieu of the note-taking service. Plaintiff stated that she already had a  
2 recording device, a LiveScribe pen, did not need another one, and was furthermore an ineffective  
3 alternative to the note-taking service she had been granted. Plaintiff explained that she had  
4 attempted to use a recording device the previous semester when note-taking services were not  
5 provided to her, but her disabilities prevented her from being able to process the audio recordings.  
6 Because of the Chevron oil refinery explosion, Plaintiff suffered from migraines, asthma, and  
7 chronic pain. In order to combat these symptoms, Plaintiff had to take numerous medications and  
8 other services (such as inhalers, pain medications, and nebulizers) which caused her to become  
9 dizzy and be unable to fully process the recordings and retain its content. Furthermore, Plaintiff's  
10 hearing loss in her right ear began to intensify (a condition that she had informed DPS of, but that  
11 DPS had failed to list as a disability). Additionally, Plaintiff's migraines were also worsened by  
12 sound as well and therefore listening to the audio recordings caused her further migraines. As a  
13 result of these issues, and without an appropriate replacement for the note-taking services, Plaintiff  
14 had to spend an exorbitant amount of time listening to the lectures (most of which were 2-3 hour  
15 lectures) and therefore fell significantly behind in the courses. Thus, audio-recording services were  
16 clearly not an appropriate alternative to the note-taking services given Plaintiff's individual needs  
17 based on her disability. On numerous occasions during this period, Plaintiff explained to then-  
18 Disability Specialist, Haydee Lindren, and then-DSP Specialist Supervisor, Constance Chiba, that  
19 a recording device was not a suitable alternative to note-taking services and had not been since  
20 Fall 2012, when student began needing and was approved for, note-taking as a DSP  
21 accommodation.

22 31. In response, on or about March 13, 2014, DSP attempted to schedule a meeting with  
23 Plaintiff in order to "explore other resources and alternatives." Plaintiff was unable to make the  
24 proposed meeting dates and times due to many commitments (classes, internship, midterms, and a  
25 legislative lobbying program) that conflicted with DSP meeting times offered.  
26



1           32. On or about April 4, 2015, despite the fact that Plaintiff had previously provided DSP  
2 medical documentation to support the need for the note-taking accommodation, DSP demanded  
3 that Plaintiff have her physician provide medical documentation demonstrating that she could not  
4 learn the class material from an audio recorder. Plaintiff responded that she would try to obtain  
5 this medical documentation.

6           33. On or about April 9, 2014, Plaintiff told DSP that she would attempt to schedule an  
7 appointment with her physician in order to provide such documentation. However, Plaintiff  
8 pointed out that her courses ended in several weeks and that she would not be able to see her  
9 physician until May 2, 2014.

10           34. On or about April 11, 2014, DSP sent Plaintiff an email stating that, given that  
11 Plaintiff had not produced evidence of a hearing or cognitive impairment, if she was asserting that  
12 she could only learn via written language she would need to provide medical documentation.

13           35. On approximately April 16, 2014, about 2 weeks from class ending, Plaintiff was  
14 provided class notes. Due to the fact that receiving these notes so late in the semester would fail to  
15 allow her to appropriately access the class lectures, Plaintiff again asked her Professor that she  
16 receive an “Incomplete for the class” and this request was granted.

17           36. In response, Plaintiff filed a complaint with The United States Department of  
18 Education Office of Civil Rights (“OCR”) alleging that Defendant denied her approved and  
19 necessary note-taker services and that Defendant discriminated against her on the basis of her  
20 disability by denying her continued financial aid for the Spring 2014 semester.

21           37. On April 3, 2015, OCR filed its report on the case based on its findings. OCR  
22 Found Defendant to have been out of compliance with Section 504/Title II and the regulations of  
23 34 C.F.R. §104.44(d), 28 C.F.R. §35.130, and 28 C.F.R. § 35.160 because it failed to engage in an  
24 interactive process with Plaintiff to establish an equally effective alternative to the note-taking  
25 accommodation and instead unilaterally decided to offer Plaintiff an audio recording device for  
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her Social Welfare 250 M course during the Fall 2013 semester and for her Public Policy Analysis PP101 course during the Spring 2014 semester. Defendant offered these recording devices despite DPS staff members knowing that an audio recording device did not appropriately accommodate her disabilities, unlike the notice-taking services, and was therefore an inappropriate alternative.<sup>2</sup>

38. Plaintiff continues to work towards her diploma at UC Berkeley by finishing all her classes in which she has grades of “Incomplete.” However, because she has taken all her requisite courses, UC Berkeley categorizes her as an “unregistered student.” She has had to take out a significant amount of loans in order to be able to do so given that she continues to be denied financial aid. From December 2014 to December 2015, she had to pay the University in order to have access to its libraries.

39. On or around December 2015, the OCR and Defendant reached a settlement agreement on behalf of disabled students at the University receiving services through DSP. As part of the settlement agreement, Plaintiff was able to submit the recordings of her fall 2013 classes that she had taped to Defendant who would then send her transcriptions of these recordings. On March 18, 2015, Defendant sent these transcriptions to Plaintiff. However, Plaintiff has received notes from these classes almost two years after requesting them. Further, not all the lecture recordings were able to be transcribed in contrast to what was agreed to by DSP.

### **Count One**

#### **(VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT, 42**

#### **U.S.C. § 12132 AGAINST DEFENDANTS)**

40. Plaintiff incorporates and realleges the allegations set forth in Paragraphs 1-39 above.

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<sup>2</sup> OCR found that Defendant was in compliance with Section 504 and Title II in regards to denying financial aid to Plaintiff for the 2014 Spring semester given that the University denied continued financial aid based on Plaintiff’s inability to complete several academic conditions. The report specifically stated that OCR made no determination on whether Defendant’s failure to provide Plaintiff with notes in her Social Welfare 250 M course necessitated her having to take an “Incomplete” grade in the course.

1 41. REGENTS is a public entity as an arm of the State of California which receives  
2 substantial funding from the United States Federal Government.

3 42. Plaintiff at all times material to this action, had diagnoses of AIDS, peripheral  
4 neuropathy, asthma, Diabetes, chronic pain, arthritis, mobility issues, migraines, diarrhea/nausea,  
5 and anxiety/depression which substantially limited her in the major life activities of learning and  
6 concentration, among others.

7 43. Plaintiff was otherwise qualified to receive services from Defendant as she was  
8 approved for a myriad of services and accommodations from the school.

9 44. Here, during the Fall 2013 semester and the Spring 2014 semester, Plaintiff suffered  
10 discrimination in violation of the ADA, 42 U.S.C. § 12132 as a result of her disabilities due to  
11 Defendant's discrimination, failure to engage in an interactive process, and failure to properly  
12 accommodate Plaintiff and her disabilities.

13 45. Plaintiff's disability accommodation letters for her classes distinctly state that her  
14 provided accommodations, including note-taking services, were "needed" and "appropriate" for  
15 her. As such, Defendant was required to provide this service for Plaintiff. Additionally, none of  
16 Plaintiff's disability accommodation letters mentioned that an audio recording device would be  
17 used in lieu of note-taking services.

18 46. When it became clear that Defendant was unable to secure volunteer note-takers, it  
19 decided to offer Plaintiff an audio recording device rather than promptly engage in an interactive  
20 process with Plaintiff to identify an effective interim or permanent solution. Defendant merely  
21 assumed that an audio recording device would be an effective replacement for all students needing  
22 note-taking assistance rather than considering Plaintiff's individualized needs.

23 47. Defendant, however, knew that audio recorder was an inappropriate alternative to  
24 note-taking services, but in response demanded medical documentation and therefore erected  
25 further barriers to Plaintiff's education.  
26

1           48. Then, in the Spring 2014 semester, Defendant declined to provide Plaintiff with  
2 continued financial aid given the alleged lack of SAP. Such a determination distinctly ignored the  
3 fact that during the Fall 2013 semester, Plaintiff was fully denied note-taking services in Social  
4 Welfare 250M and denied note-taking services for a vast majority of Introduction to Public Policy  
5 Analysis PP10. Based on the lack of appropriate accommodations, Plaintiff reasonably requested  
6 to receive “Incomplete” grades in these classes. As such, but for Plaintiff by denied appropriate  
7 accommodations during this semester, she would have been able to take and pass those classes.

8           49. Defendant denied Plaintiff continued financial aid also because she failed to  
9 complete a series of academic conditions that had been conditions of prior exceptions to alleged  
10 SAP failures granted to her under circumstances when her prior failures to make SAP were not  
11 alleged to be the result of Defendant’s failure to provide reasonable accommodations.

12           50. Such an argument ignores that the fact that in semesters prior to Spring 2014, Plaintiff  
13 was provided financial aid despite not meeting the conditions established for her by Defendant. To  
14 cite Plaintiff’s alleged failures to the meet the conditions as a reason to deny financial aid in the  
15 Spring 2014 semester was discriminatory given Defendants established past method of conduct.

16           51. As outlined above, the exceptions were granted because of the extenuating  
17 circumstances that caused Plaintiff further disabilities and necessitated the services of additional  
18 time to complete course work. Because of her exposure to noxious chemicals due to the explosion  
19 of the Chevron Refinery by the Richmond Bridge, Plaintiff experienced significant health issues  
20 including: peripheral neuropathy, asthma, chronic pain, and migraines had to attend a significant  
21 amount of medical visits during the fall 2012 semester, causing her to miss a significant portion of  
22 classes during this period. Due to her exposure to a Hepatitis A outbreak and a new diagnosis of  
23 Diabetes 2 during the spring 2013 semester, Plaintiff again had to attend numerous medical visits  
24 which again caused her to miss a significant portion of classes. During the fall 2013, Plaintiff was  
25 not provided her mandated note-taking accommodation in order to appropriately complete her  
26

1 work in her courses and also experienced a cancer scare, causing her to again miss classes due to  
 2 medical appointments. Thus, these exceptions were granted because these circumstances, in  
 3 addition her already existing disabilities, caused her to fall so behind in her classes that she was  
 4 unable to adequately catch-up to her peers and complete them. Therefore, Plaintiff reasonably  
 5 requested “Incomplete” grades in these classes due to these extenuating circumstances.

6 52. As a direct and proximate cause of the foregoing discrimination, Plaintiff suffered  
 7 damages, including embarrassment, humiliation, pain and suffering, emotional distress and  
 8 discrimination damages. Additionally, Plaintiff has been required to take out student loans to pay  
 9 to continue to attend school at UC Berkeley. Had Plaintiff received reasonable accommodations  
 10 she would have graduated and obtained employment. As a result, Plaintiff has suffered lost wages  
 11 and lost earning capacity. Plaintiff has also incurred the costs of attending UC Berkeley and other  
 12 economic damages.

### 13 **Count Two**

#### 14 **(VIOLATION OF SECTION 504 OF THE REHABILITATION ACT)**

15 53. Plaintiff incorporates and realleges the allegations set forth in Paragraphs 1-39 above.

16 54. REGENTS is a public entity as an arm of the State of California which receives  
 17 substantial funding from the United States Federal Government.

18 55. Plaintiff was at all times material to this action, had diagnoses of with AIDS,  
 19 peripheral neuropathy, asthma, Diabetes, chronic pain, arthritis, mobility issues, migraines,  
 20 diarrhea/nausea, and anxiety/depression which substantially limited her in the major life activities  
 21 of learning and concentration.

22 56. Plaintiff was otherwise qualified to receive services from Defendant as she was  
 23 approved for a myriad of services and accommodations from the school.

24 57. Here, during the Fall 2013 semester and the Spring 2014 semester, Plaintiff suffered  
 25  
 26

1 discrimination in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.* as a  
2 result of her disabilities due to Defendant's discrimination, failure to engage in an interactive  
3 process, and failure to properly accommodate Plaintiff and her disabilities.

4 58. As established above, Defendant failed to engage in an interactive process to  
5 determine whether audio recording devices were reasonable alternatives to note-taking services  
6 and instead purported to offer Plaintiff such a service without properly considering her individual  
7 needs based on her disabilities.

8 59. Additionally, Defendant denied Plaintiff continued financial aid due to alleged lack of  
9 SAP despite the fact that this lack of progress was due to its failure to appropriately accommodate  
10 Plaintiff, extenuating circumstances that caused Plaintiff further disabilities, and that Defendant  
11 had in the past been allowed Plaintiff to continue to receive financial aid despite not having met  
12 all of its established conditions for her.

13 60. As a direct and proximate cause of the foregoing discrimination, Plaintiff suffered  
14 damages, including embarrassment, humiliation, pain and suffering, emotional distress and  
15 discrimination damages. Additionally, Plaintiff has been required to take out student loans to pay  
16 to continue to attend school at UC Berkeley. Had Plaintiff received reasonable accommodations  
17 she would have graduated and obtained employment. As a result, Plaintiff has suffered lost wages  
18 and lost earning capacity. Plaintiff has also incurred the costs of attending UC Berkeley and other  
19 economic damages.

20 **JURY DEMAND**

21 61. Plaintiff demands a trial by jury on all issues for which a jury trial is afforded by  
22 right.

23 **PRAYER**

24 Plaintiff prays that the Court award damages and provide relief as follows:

- 25 1. General and special damages according to proof at trial;
- 26

2. Other remedies that this Court deems equitable and appropriate;
3. Reinstatement of Plaintiff;
4. Injunctive relief requiring Defendant to provide reasonable accommodation appropriate for Plaintiff's disabilities;
5. Approval of financial aid for Plaintiff to attend UC Berkeley;
6. Reasonable attorneys' fees and costs pursuant to statute;
7. Any remedies that this Court deems equitable and appropriate.

Dated: **September 14, 2016**

Respectfully submitted

/s/ Jay T. Jambeck

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Jay T. Jambeck  
*Attorney for Plaintiff*